

1

1 Unauthorized disclosure may also result in a civil enforcement penalty or other enforcement action by
2 the Transportation Security Administration (“TSA”) against the party making the unauthorized
3 disclosure. 49 C.F.R. § 1520.17.

4 2. Access to SSI is limited to “covered persons” with a “need to know” as set forth in 49
5 C.F.R. § 1520.7 and § 1520.11. Because the parties, their attorneys, the Court and its employees are
6 “covered persons” “with a need to know” certain SSI relevant to this case, this order permits the sharing
7 in this civil action of relevant information and materials that are marked as SSI or may contain SSI,
8 provided that they are not classified and are directly relevant to this case. The right of access to
9 materials marked as SSI or containing SSI shall be limited to the Court and its employees, Plaintiff, and
10 counsel for the parties, including their paralegal, secretarial and other legal personnel in their employ.
11 Court reporters retained by the parties for purposes of recording depositions and who have signed a
12 TSA-approved Non-Disclosure Agreement may also have access to SSI. After they have successfully
13 passed a TSA background check and signed a TSA-approved Non-Disclosure Agreement, retained and
14 non-retained expert witnesses and litigation consultants may also have access to SSI.

15 3. The materials encompassed in this protective order include, without limitation, deposition
16 testimony, deposition exhibits, interrogatory responses, admissions, affidavits, declarations, documents
17 produced pursuant to compulsory process or voluntarily in lieu of process, and any other documents or
18 information produced or given to one party by another party or by a third party in connection with in this
19 matter. Information taken from any of these materials that reveals its substance shall also be subject to
20 this protective order.

21 4. “Covered persons” have an express duty to protect against the unauthorized disclosure of
22 SSI. 49 C.F.R. § 1520.9. SSI must be safeguarded in such a way that it is not physically or visually
23 accessible to persons who do not have a “need to know,” as defined in 49 C.F.R. § 1520.11. When
24 unattended, SSI must be secured in a locked container or office, or other restricted access area.

25 5. Documents that contain SSI may not be further disseminated to persons without a “need
26 to know” except with written permission from TSA. SSI must not be disclosed by either party to any
27 person or entity other than those enumerated in paragraph two.

1 6. All documents subject to this Order shall be marked as “Confidential: Subject to SSI
2 Protective Order” or similar marking. Documents containing SSI that inadvertently have not been
3 marked as SSI still must be safeguarded against unauthorized disclosure.

4 7. Documents that are marked SSI or, though not marked, contain SSI, shall be treated as
5 confidential and shall not be published or made available to the general public in any form (whether in
6 paper or electronic form). A party seeking to file a document in the public record that contains SSI must
7 request that the Court permit the portions containing SSI be filed under seal. In connection with the
8 request to file under seal, the party must create a “FAM Name SSI Document” or “Redacted Version
9 Documents,” which can be publicly filed.

10 8. A “FAM Name SSI Document” is any document in which the only SSI contained therein
11 are names identifying individuals, other than Plaintiff, as Federal Air Marshals (FAMs), Senior FAMs,
12 or Federal Air Marshal candidates.¹ If a party wishes to file or produce a FAM Name SSI Document
13 during the course of the Litigation, that party must create a Redacted Version Document by employing
14 the First Name, Last Initial convention (*e.g.*, FAM John Doe is redacted to FAM John D.). For FAM
15 Name SSI Documents created for the purpose of this Litigation (*i.e.*, motions, memoranda, etc.), parties
16 should perform the redactions during the composition of the Redacted Version Document. For FAM
17 Name SSI documents that are not created for the purpose of Litigation, but that the parties, nevertheless,
18 choose to file or produce for litigation purposes (*i.e.*, exhibits to motions or memoranda), parties should
19 perform the redactions using Adobe PDF redaction tools or by printing and manually redacting.

20 9. Deposition testimony that may contain SSI should be so designated by verbal notice or
21 written notice within 10 days of receipt of the transcript. However, testimony containing SSI that is not
22 designated, through mistake, nonetheless must be safeguarded against unauthorized disclosure. If the
23 parties expect that the only SSI that the deposition testimony will contain will be FAM Name SSI, the
24 parties may instruct the deponents prior to the deposition to use the First Name convention in their
25 testimony.

26
27
28 ¹ Identifying individuals as Supervisory Air Marshals in Charge (SACs), Deputy Supervisory Air
Marshals in Charge (DSACs), Assistant Supervisory Air Marshals in Charge (ASACs), Supervisory
Federal Air Marshals (SFAMs), or FAMS Civilian Training Instructors does not constitute SSI.

1 10. If there is a possibility that a party will introduce or disclose SSI at a hearing, or portion
2 thereof, the party shall request that the hearing be closed to the public. If there is a possibility that a
3 party will introduce or disclose SSI at trial, the party shall request that the courtroom shall be closed to
4 the public.

5 11. Plaintiff and Plaintiff's counsel may use SSI disclosed to them in this Litigation only for
6 the purposes of the Litigation. SSI may not be further disseminated, including to a jury, except with
7 written permission from Defendant.

8 12. All documents subject to this Order in the possession of Plaintiff or Plaintiff's counsel
9 shall be returned to counsel for Defendant within 60 days of termination of this Litigation, including any
10 appellate proceedings, or shall be certified in writing to counsel for Defendant to have been destroyed by
11 Plaintiff or Plaintiff's counsel.

12 13. Nothing in this Order shall preclude any disclosure of documents subject to this Order to
13 any Judge, Magistrate, or employee of the Court for purposes of this action.

1 14. This Order is without prejudice to the rights of any party to make any objection to
2 discovery or use of SSI, or documents that may contain SSI, permitted by the Federal Rules of Civil
3 Procedure, or any statute, regulation, or other authority.

4 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

5 DATED: January 22, 2016

BRIAN J. STRETCH
Acting United States Attorney

7 /s/ Wendy M. Garbers
8 WENDY M. GARBERS
Assistant United States Attorney

9 Attorneys for THE SECRETARY
10 OF THE DEPARTMENT OF
HOMELAND SECURITY

11 DATED: January 22, 2016

MORRIS POLICH & PURDY LLP

12 /s/ Nicholas M. Wieczorek
13 NICHOLAS M. WIECZOREK

14 Attorneys for PLAINTIFF K.H.

15 PURSUANT TO STIPULATION, IT IS SO ORDERED.

16
17 DATED: January 25, 2016


18 THE HONORABLE JON S. TIGAR